

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

106

RSA-3608-2012 (O & M)
Date of Decision:22.10.2018

Kuldeep Singh and others

...Appellants

Versus

Bhinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Chauhan, Advocate
for the appellants.

Mr. Aman Bansal, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.(Oral)
CM-9625-C-2012

Allowed as prayed for.

Main Case

Defendants-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the learned trial Court.

Dispute in the present case is with regard to the estate of Jagga Singh, who died on 21.02.2003. Plaintiff claims that he died interstate whereas defendants rely upon a testament (will) dated 24.10.2002.

Learned First Appellate Court has found that Jagga Singh through out his life has been putting his thumb impression. Bank account opening form as well as registered mortgage deed have been produced, which prove that fact. However, the testament dated 24.10.2002 bears the

alleged signatures of Jagga Singh. Defendants-appellants have failed to

produce any evidence that Jagga Singh used to sign in his entire life. It has been projected that Jagga Singh used to study in a Gurudwara. Had he been literate, he would not have been putting his thumb impression in the Bank documents as well as on the mortgage deed. It is not expected that five months before the death, an old man would start signing in place of affixing his thumb impression. Still further, Will is only attested by one attesting witness, whereas, it is mandatory that Will must be attested by two attesting witnesses as per Section 63 of the Succession Act, 1925.

Learned counsel for the appellants tried to persuade this Court to take a different view on the ground that scribe is also an attesting witness because he belongs to the same village and was not a professional scribe, however, learned counsel could not justify why the testament bears alleged signatures of the testator. In the absence of any evidence to prove that Jagga Singh ever signed during his life time, the learned First Appellate Court has correctly found that the Will is surrounded by suspicious circumstance.

Hence, there is no ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

22.10.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No